

Texas Agricultural Finance Authority

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RQ-393

May 28, 1992

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Opinion Committee

The Honorable Dan Morales
Attorney General
State of Texas
The Price Daniel Building
P.O. Box 12548
Austin, Texas 78711

Re: Request for opinion concerning use of the Texas Agricultural Fund, including bond proceeds and investment income, for reimbursement of administrative costs.

Dear General Morales:

A question has arisen regarding the reimbursement, out of the Texas Agricultural Fund ("the Fund"), to the Texas Department of Agriculture ("the Department") for administrative expenses incurred by the Department on behalf of the Texas Agricultural Finance Authority ("the Authority").

The Department's Agricultural Finance Division administers the Authority's various programs, and incurs expenses in connection therewith. Additional expenses incurred by the Department on behalf of the Authority include preparation of the Authority's portion of the Department's annual financial report, and coverage by the Department's internal audit function. Currently, all such expenses are borne out of the appropriations to the Department from the State's General Revenue Fund.

The Authority's enabling legislation clearly states that the Department shall be reimbursed for administrative expenses:

"The board shall reimburse the Department of Agriculture for expenses incurred as required by the business of the authority with the approval of a majority of the board." TEX. AGRIC. CODE ANN. §58.015(a) (Vernon Supp. 1992).

The Act further provides that the Fund, including bond proceeds, may be used to pay such administrative costs:

"(d) Proceeds of the bonds issued under Subsection (c) of this section shall be deposited in the Texas agricultural fund and applied in accordance with the resolution authorizing the bonds:

- (1) to provide financial assistance to eligible agricultural businesses;
- (2) to pay costs of issuance of those bonds and the administration of any financial assistance program established with money in the Texas agricultural fund; and,
- (3) together with any other available funds, to pay the principal of or interest on or to discharge or redeem, in whole or in part, any outstanding bonds issued by the authority." TEX. AGRIC. CODE ANN. §58.031(d) (Vernon Supp. 1992).

However, the Office of the Comptroller of Public Accounts has questioned whether the Texas Constitution prohibits the use of the Fund for any purpose other than the provision of financial assistance to agricultural businesses.

The Texas Constitution, in addition to authorizing the legislation which established the Fund through the issuance of general obligation bonds, provides:

"The Texas agricultural fund shall be used only to provide financial assistance to develop, increase, improve, or expand the production, processing, marketing, or export of crops or products grown or produced primarily in this state by agricultural businesses domiciled in this state." TEX. CONST. art. III §49i(a).

The Constitution further provides that:

"Income from the investment of money in the funds that is not immediately committed to the payment of the principal of and interest on the bonds or the provision of financial assistance shall be used to create new employment and business opportunities in the

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state through the diversification and expansion of agricultural or rural small businesses, as provided by the legislature." TEX. CONST. art. III §49i(c).

The Office of the Comptroller of Public Accounts has raised concerns as to whether these Constitutional provisions would prohibit the Authority from using the Fund, including bond proceeds and investment income, to reimburse the Department for administrative expenses incurred on behalf of the Authority, as clearly authorized by TEX. AGRIC. CODE ANN. §58.015(a) and §58.031(d).

The Authority would contend that, under the Constitution, the Fund may be used for the purpose of financial assistance, and for all expenses incurred as necessary "to provide" such financial assistance, including reimbursement of the Department.

Therefore, in order to resolve this issue and ensure that the General Revenue Fund is reimbursed for all allowable costs associated with administering the Authority's programs, it is requested that an opinion be issued addressing the following concerns:

Whether or not the Texas Agricultural Finance Authority is prohibited from using the Texas Agricultural Fund, including bond proceeds and/or income from the investment of money in the fund, to reimburse the Texas Department of Agriculture for administrative expenses incurred by the Department on behalf of the Authority.

I look forward to your prompt response.

Sincerely yours,



Mary Webb
Chair
Texas Agricultural Finance Authority

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